

Senate Engrossed

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

CHAPTER 177

SENATE BILL 1025

AN ACT

AMENDING TITLE 36, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-207; AMENDING SECTIONS 41-1758, 41-1758.01 AND 41-1758.07, ARIZONA REVISED STATUTES; RELATING TO FINGERPRINTING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 36, chapter 2, article 1, Arizona Revised Statutes,
3 is amended by adding section 36-207, to read:

4 36-207. Fingerprinting requirements; definition

5 A. A STATE HOSPITAL EMPLOYEE OR VOLUNTEER MUST HAVE A VALID
6 FINGERPRINT CLEARANCE CARD ISSUED PURSUANT TO SECTION 41-1758.07 OR MUST
7 APPLY FOR A FINGERPRINT CLEARANCE CARD WITHIN SEVEN WORKING DAYS AFTER
8 BEGINNING EMPLOYMENT OR PERFORMING VOLUNTEER WORK. THE EMPLOYEE OR VOLUNTEER
9 MUST CERTIFY ON FORMS THAT ARE PROVIDED BY THE DEPARTMENT AND THAT ARE
10 NOTARIZED THAT THE PERSON IS NOT AWAITING TRIAL ON OR HAS NEVER BEEN
11 CONVICTED OF OR ADMITTED IN OPEN COURT OR PURSUANT TO A PLEA AGREEMENT TO
12 COMMITTING ANY OF THE OFFENSES LISTED IN SECTION 41-1758.07, SUBSECTION B IN
13 THIS STATE OR ANY SIMILAR OFFENSE IN ANOTHER STATE OR JURISDICTION. A
14 CONVICTION AFTER A PLEA OF NO CONTEST IS DEEMED TO BE A CONVICTION FOR THE
15 PURPOSES OF THIS SUBSECTION.

16 B. THE STATE HOSPITAL MAY NOT ALLOW A PERSON TO BE AN EMPLOYEE OR
17 PERFORM VOLUNTEER WORK IF THAT PERSON HAS BEEN DENIED A FINGERPRINT CLEARANCE
18 CARD PURSUANT TO SECTION 41-1758.07 OR HAS NOT RECEIVED AN INTERIM APPROVAL
19 FROM THE BOARD OF FINGERPRINTING PURSUANT TO SECTION 41-619.55, SUBSECTION I.

20 C. FOR THE PURPOSES OF THIS SECTION, "STATE HOSPITAL" INCLUDES THE
21 ARIZONA COMMUNITY PROTECTION AND TREATMENT CENTER.

22 Sec. 2. Section 41-1758, Arizona Revised Statutes, is amended to read:
23 41-1758. Definitions

24 In this article, unless the context otherwise requires:

25 1. "Agency" means the supreme court, the department of economic
26 security, the department of education, the department of health services, the
27 department of juvenile corrections, the department of emergency and military
28 affairs, the state real estate department, the board of fingerprinting or the
29 board of examiners of nursing care institution administrators and assisted
30 living facility managers.

31 2. "Division" means the fingerprinting division in the department of
32 public safety.

33 3. "Good cause exception" means the issuance of a fingerprint
34 clearance card to an employee pursuant to section 41-619.55.

35 4. "Person" means a person who is required to be fingerprinted
36 pursuant to any of the following:

- 37 (a) Section 8-105.
- 38 (b) Section 8-322.
- 39 (c) Section 8-509.
- 40 (d) Section 8-802.
- 41 (e) Section 15-183.
- 42 (f) Section 15-503.
- 43 (g) Section 15-512.
- 44 (h) Section 15-534.
- 45 (i) Section 15-1330.

1 (j) Section 15-1881.
2 (k) Section 26-103.
3 (l) Section 32-2108.01.
4 (m) Section 32-2123.
5 (n) SECTION 36-207.
6 ~~(n)~~ (o) Section 36-411.
7 ~~(o)~~ (p) Section 36-425.03.
8 ~~(p)~~ (q) Section 36-446.04.
9 ~~(q)~~ (r) Section 36-594.01.
10 ~~(r)~~ (s) Section 36-594.02.
11 ~~(s)~~ (t) Section 36-882.
12 ~~(t)~~ (u) Section 36-883.02.
13 ~~(u)~~ (v) Section 36-897.01.
14 ~~(v)~~ (w) Section 36-897.03.
15 ~~(w)~~ (x) Section 36-3008.
16 ~~(x)~~ (y) Section 41-619.52.
17 ~~(y)~~ (z) Section 41-619.53.
18 ~~(z)~~ (aa) Section 41-1964.
19 ~~(aa)~~ (bb) Section 41-1967.01.
20 ~~(bb)~~ (cc) Section 41-1968.
21 ~~(cc)~~ (dd) Section 41-1969.
22 ~~(dd)~~ (ee) Section 41-2814.
23 ~~(ee)~~ (ff) Section 46-141, subsection A.
24 ~~(ff)~~ (gg) Section 46-321.
25 5. "Vulnerable adult" has the same meaning prescribed in section
26 13-3623.
27 Sec. 3. Section 41-1758.01, Arizona Revised Statutes, is amended to
28 read:
29 41-1758.01. Fingerprinting division; duties
30 The fingerprinting division is established in the department of public
31 safety and shall:
32 1. Conduct fingerprint background checks for persons and applicants
33 who are seeking licenses from state agencies, employment with licensees,
34 contract providers and state agencies or employment or educational
35 opportunities with agencies that require fingerprint background checks
36 pursuant to sections 8-105, 8-322, 8-509, 8-802, 15-183, 15-503, 15-512,
37 15-534, 15-1330, 15-1881, 26-103, 32-2108.01, 32-2123, 36-207, 36-411,
38 36-425.03, 36-446.04, 36-594.01, 36-594.02, 36-882, 36-883.02, 36-897.01,
39 36-897.03, 36-3008, 41-619.52, 41-619.53, 41-1964, 41-1967.01, 41-1968,
40 41-1969 and 41-2814, section 46-141, subsection A and section 46-321.
41 2. Issue fingerprint clearance cards. On issuance, a fingerprint
42 clearance card becomes the personal property of the cardholder and the
43 cardholder shall retain possession of the fingerprint clearance card.
44 3. On submission of an application for a fingerprint clearance card,
45 collect the fees established by the board of fingerprinting pursuant to

1 section 41-619.53 and deposit, pursuant to sections 35-146 and 35-147, the
2 monies collected in the board of fingerprinting fund.

3 4. Inform in writing each person who submits fingerprints for a
4 fingerprint background check of the person's right to petition the board of
5 fingerprinting for a good cause exception pursuant to sections 41-1758.03 and
6 41-1758.07.

7 5. Administer and enforce this article.

8 Sec. 4. Section 41-1758.07, Arizona Revised Statutes, is amended to
9 read:

10 41-1758.07. Level I fingerprint clearance cards; definitions

11 A. On receiving the state and federal criminal history record of a
12 person who is required to be fingerprinted pursuant to this section, the
13 fingerprinting division in the department of public safety shall compare the
14 record with the list of criminal offenses that preclude the person from
15 receiving a level I fingerprint clearance card. If the person's criminal
16 history record does not contain any of the offenses listed in subsections B
17 and C of this section, the fingerprinting division shall issue the person a
18 level I fingerprint clearance card.

19 B. A person who is subject to registration as a sex offender in this
20 state or any other jurisdiction or who is awaiting trial on or who has been
21 convicted of committing or attempting, soliciting, facilitating or conspiring
22 to commit one or more of the following offenses in this state or the same or
23 similar offenses in another state or jurisdiction is precluded from receiving
24 a level I fingerprint clearance card:

- 25 1. Sexual abuse of a vulnerable adult.
- 26 2. Incest.
- 27 3. Homicide, including first or second degree murder, manslaughter and
28 negligent homicide.
- 29 4. Sexual assault.
- 30 5. Sexual exploitation of a minor.
- 31 6. Sexual exploitation of a vulnerable adult.
- 32 7. Commercial sexual exploitation of a minor.
- 33 8. Commercial sexual exploitation of a vulnerable adult.
- 34 9. Child prostitution as prescribed in section 13-3212.
- 35 10. Child abuse.
- 36 11. Felony child neglect.
- 37 12. Abuse of a vulnerable adult.
- 38 13. Sexual conduct with a minor.
- 39 14. Molestation of a child.
- 40 15. Molestation of a vulnerable adult.
- 41 16. Dangerous crimes against children as defined in section 13-705.
- 42 17. Exploitation of minors involving drug offenses.
- 43 18. Taking a child for the purpose of prostitution as prescribed in
44 section 13-3206.
- 45 19. Neglect or abuse of a vulnerable adult.

- 1 20. Sex trafficking.
- 2 21. Sexual abuse.
- 3 22. Production, publication, sale, possession and presentation of
- 4 obscene items as prescribed in section 13-3502.
- 5 23. Furnishing harmful items to minors as prescribed in section
- 6 13-3506.
- 7 24. Furnishing harmful items to minors by internet activity as
- 8 prescribed in section 13-3506.01.
- 9 25. Obscene or indecent telephone communications to minors for
- 10 commercial purposes as prescribed in section 13-3512.
- 11 26. Luring a minor for sexual exploitation.
- 12 27. Enticement of persons for purposes of prostitution.
- 13 28. Procurement by false pretenses of person for purposes of
- 14 prostitution.
- 15 29. Procuring or placing persons in a house of prostitution.
- 16 30. Receiving earnings of a prostitute.
- 17 31. Causing one's spouse to become a prostitute.
- 18 32. Detention of persons in a house of prostitution for debt.
- 19 33. Keeping or residing in a house of prostitution or employment in
- 20 prostitution.
- 21 34. Pandering.
- 22 35. Transporting persons for the purpose of prostitution, polygamy and
- 23 concubinage.
- 24 36. Portraying adult as a minor as prescribed in section 13-3555.
- 25 37. Admitting minors to public displays of sexual conduct as prescribed
- 26 in section 13-3558.
- 27 38. Any felony offense involving contributing to the delinquency of a
- 28 minor.
- 29 39. Unlawful sale or purchase of children.
- 30 40. Child bigamy.
- 31 41. Any felony offense involving domestic violence as defined in
- 32 section 13-3601 except for a felony offense only involving criminal damage in
- 33 an amount of more than two hundred fifty dollars but less than one thousand
- 34 dollars if the offense was committed before ~~the effective date of this~~
- 35 ~~section~~ JUNE 29, 2009.
- 36 42. Any felony offense in violation of title 13, chapter 12 if
- 37 committed within five years before the date of applying for a level I
- 38 fingerprint clearance card.
- 39 43. Felony drug or alcohol related offenses if committed within five
- 40 years before the date of applying for a level I fingerprint clearance card.
- 41 44. Felony indecent exposure.
- 42 45. Felony public sexual indecency.
- 43 46. Terrorism.
- 44 47. Any offense involving a violent crime as defined in section
- 45 13-901.03.

1 C. A person who is awaiting trial on or who has been convicted of
2 committing or attempting, soliciting, facilitating or conspiring to commit
3 one or more of the following offenses in this state or the same or similar
4 offenses in another state or jurisdiction is precluded from receiving a level
5 I fingerprint clearance card, except that the person may petition the board
6 of fingerprinting for a good cause exception pursuant to section 41-619.55:

- 7 1. Any misdemeanor offense in violation of title 13, chapter 12.
- 8 2. Misdemeanor indecent exposure.
- 9 3. Misdemeanor public sexual indecency.
- 10 4. Aggravated criminal damage.
- 11 5. Theft.
- 12 6. Theft by extortion.
- 13 7. Shoplifting.
- 14 8. Forgery.
- 15 9. Criminal possession of a forgery device.
- 16 10. Obtaining a signature by deception.
- 17 11. Criminal impersonation.
- 18 12. Theft of a credit card or obtaining a credit card by fraudulent
19 means.
- 20 13. Receipt of anything of value obtained by fraudulent use of a credit
21 card.
- 22 14. Forgery of a credit card.
- 23 15. Fraudulent use of a credit card.
- 24 16. Possession of any machinery, plate or other contrivance or
25 incomplete credit card.
- 26 17. False statement as to financial condition or identity to obtain a
27 credit card.
- 28 18. Fraud by persons authorized to provide goods or services.
- 29 19. Credit card transaction record theft.
- 30 20. Misconduct involving weapons.
- 31 21. Misconduct involving explosives.
- 32 22. Depositing explosives.
- 33 23. Misconduct involving simulated explosive devices.
- 34 24. Concealed weapon violation.
- 35 25. Misdemeanor possession and misdemeanor sale of peyote.
- 36 26. Felony possession and felony sale of peyote if committed more than
37 five years before the date of applying for a level I fingerprint clearance
38 card.
- 39 27. Misdemeanor possession and misdemeanor sale of a vapor-releasing
40 substance containing a toxic substance.
- 41 28. Felony possession and felony sale of a vapor-releasing substance
42 containing a toxic substance if committed more than five years before the
43 date of applying for a level I fingerprint clearance card.
- 44 29. Misdemeanor sale of precursor chemicals.

1 30. Felony sale of precursor chemicals if committed more than five
2 years before the date of applying for a level I fingerprint clearance card.

3 31. Misdemeanor possession, misdemeanor use or misdemeanor sale of
4 marijuana, dangerous drugs or narcotic drugs.

5 32. Felony possession, felony use or felony sale of marijuana,
6 dangerous drugs or narcotic drugs if committed more than five years before
7 the date of applying for a level I fingerprint clearance card.

8 33. Misdemeanor manufacture or misdemeanor distribution of an imitation
9 controlled substance.

10 34. Felony manufacture or felony distribution of an imitation
11 controlled substance if committed more than five years before the date of
12 applying for a level I fingerprint clearance card.

13 35. Misdemeanor manufacture or misdemeanor distribution of an imitation
14 prescription-only drug.

15 36. Felony manufacture or felony distribution of an imitation
16 prescription-only drug if committed more than five years before the date of
17 applying for a level I fingerprint clearance card.

18 37. Misdemeanor manufacture or misdemeanor distribution of an imitation
19 over-the-counter drug.

20 38. Felony manufacture or felony distribution of an imitation
21 over-the-counter drug if committed more than five years before the date of
22 applying for a level I fingerprint clearance card.

23 39. Misdemeanor possession or misdemeanor possession with intent to use
24 an imitation controlled substance.

25 40. Felony possession or felony possession with intent to use an
26 imitation controlled substance if committed more than five years before the
27 date of applying for a level I fingerprint clearance card.

28 41. Misdemeanor possession or misdemeanor possession with intent to use
29 an imitation prescription-only drug.

30 42. Felony possession or felony possession with intent to use an
31 imitation prescription-only drug if committed more than five years before the
32 date of applying for a level I fingerprint clearance card.

33 43. Misdemeanor possession or misdemeanor possession with intent to use
34 an imitation over-the-counter drug.

35 44. Felony possession or felony possession with intent to use an
36 imitation over-the-counter drug if committed more than five years before the
37 date of applying for a level I fingerprint clearance card.

38 45. Misdemeanor manufacture of certain substances and drugs by certain
39 means.

40 46. Felony manufacture of certain substances and drugs by certain means
41 if committed more than five years before the date of applying for a level I
42 fingerprint clearance card.

43 47. Adding poison or other harmful substance to food, drink or
44 medicine.

1 48. A criminal offense involving criminal trespass and burglary under
2 title 13, chapter 15.

3 49. A criminal offense under title 13, chapter 23, except terrorism.

4 50. Misdemeanor offenses involving child neglect.

5 51. Misdemeanor offenses involving contributing to the delinquency of a
6 minor.

7 52. Misdemeanor offenses involving domestic violence as defined in
8 section 13-3601.

9 53. Felony offenses involving domestic violence if the offense only
10 involved criminal damage in an amount of more than two hundred fifty dollars
11 but less than one thousand dollars and the offense was committed before the
12 ~~effective date of this section~~ JUNE 29, 2009.

13 54. Arson.

14 55. Felony offenses involving sale, distribution or transportation of,
15 offer to sell, transport or distribute or conspiracy to sell, transport or
16 distribute marijuana, dangerous drugs or narcotic drugs if committed more
17 than five years before the date of applying for a level I fingerprint
18 clearance card.

19 56. Criminal damage.

20 57. Misappropriation of charter school monies as prescribed in section
21 13-1818.

22 58. Taking identity of another person or entity.

23 59. Aggravated taking identity of another person or entity.

24 60. Trafficking in the identity of another person or entity.

25 61. Cruelty to animals.

26 62. Prostitution, as prescribed in section 13-3214.

27 63. Sale or distribution of material harmful to minors through vending
28 machines as prescribed in section 13-3513.

29 64. Welfare fraud.

30 65. Any felony offense in violation of title 13, chapter 12 if
31 committed more than five years before the date of applying for a level I
32 fingerprint clearance card.

33 66. Kidnapping.

34 67. Robbery, aggravated robbery or armed robbery.

35 D. A person who is awaiting trial on or who has been convicted of
36 committing or attempting to commit a misdemeanor violation of section
37 28-1381, 28-1382 or 28-1383 in this state or the same or A similar offense in
38 another state or jurisdiction within five years from the date of applying for
39 a level I fingerprint clearance card is precluded from driving any vehicle to
40 transport employees or clients of the employing agency as part of the
41 person's employment. The division shall place a notation on the level I
42 fingerprint clearance card that indicates this driving restriction. This
43 subsection does not preclude a person from driving a vehicle alone as part of
44 the person's employment.

1 E. Notwithstanding subsection C of this section, on receiving written
2 notice from the board of fingerprinting that a good cause exception was
3 granted pursuant to section 41-619.55, the fingerprinting division shall
4 issue a level I fingerprint clearance card to the applicant.

5 F. If the fingerprinting division denies a person's application for a
6 level I fingerprint clearance card pursuant to subsection C of this section
7 and a good cause exception is requested pursuant to section 41-619.55, the
8 fingerprinting division shall release, on request by the board of
9 fingerprinting, the person's criminal history record to the board of
10 fingerprinting.

11 G. A person shall be granted a level I fingerprint clearance card
12 pursuant to this section if either of the following applies:

13 1. An agency granted a good cause exception before August 16, 1999 and
14 no new precluding offense is identified. The fingerprint clearance card
15 shall specify only the program that granted the good cause exception. On the
16 request of the applicant, the agency that granted the prior good cause
17 exception shall notify the fingerprinting division in writing of the date on
18 which the prior good cause exception was granted, ~~and~~ the date of the
19 conviction and the name of the offense for which the good cause exception was
20 granted.

21 2. The board granted a good cause exception and no new precluding
22 offense is identified.

23 H. The licensee or contract provider shall assume the costs of
24 fingerprint checks conducted pursuant to this section and may charge these
25 costs to persons required to be fingerprinted.

26 I. A person who is under eighteen years of age or who is at least
27 ninety-nine years of age is exempt from the level I fingerprint clearance
28 card requirements of this section. At all times the person shall be under
29 the direct visual supervision of personnel who have valid level I fingerprint
30 clearance cards.

31 J. The fingerprinting division may conduct periodic state criminal
32 history records checks for the purpose of updating the clearance status of
33 current level I fingerprint clearance cardholders pursuant to this section
34 and may notify the board of fingerprinting and the agency of the results of
35 the records check.

36 K. The fingerprinting division shall revoke a person's level I
37 fingerprint clearance card on receipt of a written request for revocation
38 from the board of fingerprinting pursuant to section 41-619.55.

39 L. The fingerprinting division shall not issue a level I fingerprint
40 clearance card to an applicant if the division cannot determine, within
41 thirty business days after receipt of the person's state and federal criminal
42 history record information, whether the person is awaiting trial on or has
43 been convicted of committing any of the offenses listed in subsection B or C
44 of this section. If the division is unable to make the determination
45 required by this section and does not issue a level I fingerprint clearance

1 card to a person, the person may request a good cause exception pursuant to
2 section 41-619.55.

3 M. If after conducting a state and federal criminal history records
4 check the fingerprinting division determines that it is not authorized to
5 issue a level I fingerprint clearance card to an applicant, the division
6 shall notify the agency that the fingerprinting division is not authorized to
7 issue a level I fingerprint clearance card. This notice shall include the
8 criminal history information on which the denial was based. This criminal
9 history information is subject to dissemination restrictions pursuant to
10 section 41-1750 and Public Law 92-544.

11 N. The fingerprinting division is not liable for damages resulting
12 from:

13 1. The issuance of a level I fingerprint clearance card to an
14 applicant who is later found to have been ineligible to receive a level I
15 fingerprint clearance card at the time the card was issued.

16 2. The denial of a level I fingerprint clearance card to an applicant
17 who is later found to have been eligible to receive a level I fingerprint
18 clearance card at the time issuance of the card was denied.

19 O. Notwithstanding any law to the contrary, an individual may apply
20 for and receive a level I fingerprint clearance card pursuant to this section
21 to satisfy a requirement that the person have a valid fingerprint clearance
22 card issued pursuant to section 41-1758.03.

23 P. Notwithstanding any law to the contrary, except as prescribed
24 pursuant to subsection Q of this section, an individual who receives a
25 level I fingerprint clearance card pursuant to this section also satisfies a
26 requirement that the individual have a valid fingerprint clearance card
27 issued pursuant to section 41-1758.03.

28 Q. Unless a cardholder commits an offense listed in subsection B or C
29 of this section after ~~the effective date of this section~~ JUNE 29, 2009, a
30 fingerprint clearance card issued pursuant to section 41-1758.03 before ~~the~~
31 ~~effective date of this section~~ JUNE 29, 2009 and its renewals are valid for
32 all requirements for a level I fingerprint clearance card except those
33 relating to the requirements of section 8-105 or 8-509. A fingerprint
34 clearance card issued before ~~the effective date of this section~~ JUNE 29, 2009
35 to meet the requirements of section 8-105 or 8-509 and its renewals are valid
36 after ~~the effective date of this section~~ JUNE 29, 2009 to meet all
37 requirements for a level I fingerprint clearance card, including the
38 requirements of section 8-105 or 8-509 if the cardholder has been certified
39 by the court to adopt or has been issued a foster home license before ~~the~~
40 ~~effective date of this section~~ JUNE 29, 2009.

41 R. The issuance of a level I fingerprint clearance card does not
42 entitle a person to employment.

1 S. For the purposes of this section:

2 1. "Person" means a person who is fingerprinted pursuant to:

3 (a) Section 8-105, 8-509, 8-802, 36-207, 36-594.01, 36-594.02, 36-882,
4 36-883.02, 36-897.01, 36-897.03, 41-619.52, 41-619.53, 41-1964, 41-1967.01,
5 41-1968, 41-1969 or 46-141.

6 (b) Subsection 0 of this section.

7 2. "Renewal" means the issuance of a fingerprint clearance card to an
8 existing fingerprint clearance cardholder who applies before the person's
9 existing fingerprint clearance card expires.

APPROVED BY THE GOVERNOR APRIL 19, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 19, 2011.

Passed the House April 12, 20 11,

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

[Signature]
Speaker of the House

Cheryl Laube
Chief Clerk of the House

Passed the Senate March 1, 20 11,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

[Signature]
President of the Senate

Channing Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

14 day of April, 20 11,

at 4:46 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 19th day of

April, 20 11,

at 9:16 o'clock A. M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 19th day of April, 20 11,

at 11:12 o'clock A. M.

[Signature]
Secretary of State

S.B. 1025